



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1086]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Manufacture of Controlled Substances and Listed Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed updates to special surveillance list.

SUMMARY: The Controlled Substances Act provides for civil penalties for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with reckless disregard for the illegal uses to which such laboratory supply will be put. The term *laboratory supply* is defined as a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. The Drug Enforcement Administration is hereby publishing a notice of proposed updates to the Special Surveillance List.

DATES: Comments must be submitted electronically or postmarked on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the electronic Federal Docket Management System will not accept any comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA-1086” on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page

or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration;
Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also place all of the

personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this proposal is available at <http://www.regulations.gov> for easy reference.

Background

The Controlled Substances Act (CSA), as amended by the Comprehensive Methamphetamine Control Act of 1996 (MCA), provides for the publication of a Special Surveillance List by the Attorney General.¹ The Special Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances and listed chemicals. The CSA defines “laboratory supply” as “a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled

¹ 21 U.S.C. 842(a).

substances and listed chemicals.”² The CSA provides for a civil penalty of not more than \$250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with “reckless disregard” for the illegal uses to which such a laboratory supply will be put.³ The CSA further states that, for purposes of 21 U.S.C. 842(a)(11), “there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer.”⁴

The publication of the Special Surveillance List serves two purposes. First, it informs individuals and firms of the potential use of the items on the list in the manufacture of controlled substances and listed chemicals. Second, it reminds individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of the CSA, with reckless disregard for the illegal uses to which such a laboratory supply will be put.⁵ The publication of an updated Special Surveillance List will provide an increased level of public awareness and law enforcement control to prevent the diversion of laboratory supplies used for the manufacture of listed chemicals and controlled substances.

² Id.

³ 21 U.S.C. 842(c)(2)(C). This civil monetary penalty has been adjusted for inflation. For penalties assessed after January 30, 2023, with respect to violations occurring after November 2, 2015, the maximum penalty is \$470,640. 88 FR 5776, 5780.

⁴ 21 U.S.C. 842(a).

⁵ 21 U.S.C. 842(a)(11).

The first Special Surveillance List was published in 1999 and has not been updated since.⁶ Although the CSA does not require notice and comment for changes to the Special Surveillance List, DEA is providing notice of proposed changes and an opportunity for the public to comment because the list has not been updated in over 23 years.

In developing the proposed updates to the Special Surveillance List, DEA consulted with federal, state, local, and foreign law enforcement officials, forensic laboratory authorities, intelligence groups, drug profiling programs, and international organizations. DEA examined clandestine laboratory seizure reports and drug profiling reports for information regarding (1) illicit drug production methods; (2) chemicals actually used in the clandestine production of controlled substances and listed chemicals; and (3) the role and importance of chemicals used in the synthesis of controlled substances and listed chemicals. In addition, DEA considered the legitimate uses and market for these chemicals. The proposed updates to the Special Surveillance List includes chemicals used in the production of synthetic drugs such as fentanyl, amphetamine, methamphetamine, PCP, LSD, and other controlled substances and listed chemicals.

DEA is proposing to update the Special Surveillance List by adding the following laboratory supplies to the existing Special Surveillance List:

Chemicals, including their salts whenever the existence of such salts is possible

(2-nitroprop-1-en-1-yl)benzene (1-phenyl-2-nitropropene; P2NP)

1-(4-bromophenyl)propan-1-one

1-(4-chlorophenyl)propan-1-one

1-(4-methylphenyl)propan-1-one

1-benzylpiperidin-4-one (*N*-benzyl-4-piperidone)

1-chloro-*N*-methyl-1-phenylpropan-2-amine (chloroephedrine; chloropseudoephedrine)

⁶ 64 FR 25910 (May 13, 1999).

1-phenylbutan-1-one

1-phenylpentan-1-one

1-phenylpropan-1-one

2-bromo-1-(4-chlorophenyl)propan-1-one

2-bromo-1-(4-methoxyphenyl)propan-1-one

2-bromo-1-(4-methylphenyl)propan-1-one

2-bromo-1-phenylpentan-1-one

2-bromo-1-phenylpropan-1-one

3-methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid; P2P glycidic acid) and its esters (e.g. methyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK methyl glycidate); ethyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK ethyl glycidate))

phenethyl bromide ((2-bromoethyl)benzene)

3-oxo-2-phenylbutanoic acid and its esters (e.g., *alpha*-phenylacetoacetic acid; ethyl 3-oxo-2-phenylbutanoate (EAPA))

5-(2-nitroprop-1-en-1-yl)benzodioxole (3,4-methylenedioxyphenyl-2-nitropropene; 3,4-MDP2NP)

azobisisobutyronitrile

butane-1,4-diol (1,4-butanediol)

ethyl 3-oxo-4-phenylbutanoate

ethyl-3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (3,4-MDP-2-P ethyl glycidate)

methyl 2-(1,3-benzodioxol-5-yl)-3-oxobutanoate (MAMDPA; MDMAPA)

propionyl chloride

sodium borohydride

sodium triacetoxyborohydride

tert-butyl 4-((4-fluorophenyl)amino)piperidine-1-carboxylate (*para*-fluoro 1-boc-4-AP)

thioglycolic acid and its esters (e.g., methyl thioglycolate)

In addition to the chemicals listed above, DEA is proposing to update the listing of tableting machines under equipment to explicitly include punches and dies. DEA proposes to update the listing of tableting machines to read as follows:

Equipment

tableting machines, including punches and dies

The Special Surveillance List continues to include all listed chemicals as specified in 21 CFR 1310.02(a) or (b). DEA is proposing to remove two individually listed chemicals from the Special Surveillance List (hypophosphorus acid and red phosphorus) given that those chemicals have since been added to List I and are, therefore, automatically included as laboratory supplies. The phrase “all listed chemicals” includes all chemical mixtures and all over-the-counter (OTC) pharmaceutical products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls. The following is the proposed update to Special Surveillance List for laboratory supplies used in the manufacture of controlled substances and listed chemicals, including the additions listed above:

Special Surveillance List Published Pursuant to 21 U.S.C. Section 842(a)

Chemicals, including their salts whenever the existence of such salts is possible

All listed chemicals as specified in 21 CFR 1310.02(a) or (b). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

(2-nitroprop-1-en-1-yl)benzene (1-phenyl-2-nitropropene; P2NP)

1-(4-bromophenyl)propan-1-one

1-(4-chlorophenyl)propan-1-one

1-(4-methylphenyl)propan-1-one

1,1'-carbonyldiimidazole

1,1-dichloro-1-fluoroethane (e.g., Freon 141B)

1-benzylpiperidin-4-one (*N*-benzyl-4-piperidone)

1-chloro-*N*-methyl-1-phenylpropan-2-amine (chloroephedrine; chloropseudoephedrine)

1-phenylbutan-1-one

1-phenylpentan-1-one

1-phenylpropan-1-one

2,5-dimethoxyphenethylamine

2-bromo-1-(4-chlorophenyl)propan-1-one

2-bromo-1-(4-methoxyphenyl)propan-1-one

2-bromo-1-(4-methylphenyl)propan-1-one

2-bromo-1-phenylpentan-1-one

2-bromo-1-phenylpropan-1-one

3-methyl-3-phenyloxirane-2-carboxylic acid (BMK glycidic acid; P2P glycidic acid) and its esters (e.g., methyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK methyl glycidate); ethyl 3-methyl-3-phenyloxirane-2-carboxylate (BMK ethyl glycidate))

3-oxo-2-phenylbutanoic acid and its esters (e.g., alpha-phenylacetoacetic acid; ethyl 3-oxo-2-phenylbutanoate (EAPA))

5-(2-nitroprop-1-en-1-yl)benzodioxole (3,4-methylenedioxyphenyl-2-nitropropene; 3,4-MDP2NP)

ammonia gas

ammonium formate

azobisisobutyronitrile

bromobenzene

butane-1,4-diol (1,4-butanediol)

cyclohexanone

diethylamine and its salts

ethyl 3-oxo-4-phenylbutanoate

ethyl-3-(1,3-benzodioxol-5-yl)-2-methyloxirane-2-carboxylate (3,4-MDP-2-P ethyl glycidate)

formamide

formic acid

lithium aluminum hydride

lithium metal

magnesium metal (turnings)

mercuric chloride

methyl 2-(1,3-benzodioxol-5-yl)-3-oxobutanoate (MAMDPA; MDMAPA)

N-methylformamide

organomagnesium halides (Grignard reagents) (e.g., ethylmagnesium bromide and phenylmagnesium bromide)

ortho-toluidine

phenethyl bromide ((2-bromoethyl)benzene)

phenylethanolamine and its salts

phosphorus pentachloride

potassium dichromate

propionyl chloride

pyridine and its salts

sodium borohydride

sodium dichromate

sodium metal

sodium triacetoxyborohydride

tert-butyl 4-((4-fluorophenyl)amino)piperidine-1-carboxylate (*para*-fluoro 1-boc-4-AP)

thioglycolic acid and its esters (e.g., methyl thioglycolate)

thionyl chloride

trichloromonofluoromethane (e.g., Freon-11, Carrene-2)

trichlorotrifluoroethane (e.g., Freon 113)

Equipment

hydrogenators

tableting machines, including punches and dies

encapsulating machines

22 liter heating mantels

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA pursuant to 28 CFR 0.100.

These proposed update to the Special Surveillance List will be finalized upon the publication of a notice that updates the Special Surveillance List. The Special Surveillance List may be updated as needed to reflect changes in the chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals by publication of a notice in the *Federal Register*. DEA will disseminate the updated Special Surveillance List as widely as possible upon any final notice updating the current Special Surveillance List. In addition, the Special Surveillance List will be available on the DEA Diversion Control homepage at <https://www.deadiversion.usdoj.gov/> upon publication of a notice that updates the Special Surveillance List.

Regulatory Analyses

The proposed updates to the Special Surveillance List would apply to all individuals and firms which distribute the listed chemicals and laboratory supplies (chemicals, products, materials, or equipment) on the list. This notice to update the Special Surveillance List does not impose any recordkeeping or reporting requirements for any of the laboratory supplies. Thus, the surveillance list will have a negligible impact on affected parties.

As noted above, the notice of proposed updates to the Special Surveillance List serves two purposes. First, it informs individuals and firms of the potential use of the items on the list in the manufacture of controlled substances and listed chemicals. Second, it reminds

individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person any time after the two-week period following receipt of written notification by the Attorney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.

These proposed updates will provide an increased level of law enforcement control to prevent the diversion of laboratory supplies used for the manufacture of listed chemicals and controlled substances. It will not, however, impose any new regulatory burden on the public. Nevertheless, since no updates have been made since May 13, 1999, when DEA originally published its final rule regarding the Special Surveillance List,⁷ DEA is providing the opportunity for comment. This notice of proposed updates fulfills the requirement imposed by Section 205 of the MCA that the Attorney General shall publish a Special Surveillance List which contains chemicals, products, materials, or equipment used in the manufacture of listed chemicals and controlled substances.

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Signing Authority

This document of the Drug Enforcement Administration was signed on June 12, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Scott Brinks,
Federal Register Liaison Officer,
Drug Enforcement Administration.

⁷ *Id.*

